

④

No. 85-732

Supreme Court, U.S.

FILED

APR 30 1988

JOSEPH E. GRANOL, JR.  
CLERK

IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1985

WESTERN AIR LINES, INC.; REPUBLIC AIRLINES, INC.  
FRONTIER AIRLINES, INC.; and OZARK AIR LINES, INC.  
*Appellants,*

vs.

BOARD OF EQUALIZATION OF THE STATE OF SOUTH  
DAKOTA, *et al.*,  
*Appellees.*

On Appeal from the Supreme Court  
For the State of South Dakota

JOINT APPENDIX

RAYMOND J. RASENBERGER*	MARK V. MEIERHENRY*
RACHEL B. TRINDER	Attorney General
C. WESTBROOK MURPHY	JOHN DEWELL
ZUCKERT, SCOUTT	Assistant Attorney
RASENBERGER & JOHNSON	General
888 - 17th Street, N.W.	State Capitol
Washington, D.C. 20006	Pierre, South Dakota 57501
Tel. No.: (202) 298-8660	Tel. No.: (605) 773-3215
<i>Counsel for Appellants</i>	<i>Counsel for Appellees</i>

\* *Counsel of Record*

**Jurisdictional Statement Filed October 29, 1985**  
**Probable Jurisdiction Noted February 24, 1985**

66pp

## TABLE OF CONTENTS

Relevant Docket Entries .....	JA-1
A. List of Cases Appealed .....	JA-1
B. Docket Entries .....	JA-4
Complaint and Answer, <i>Western Air Lines v. Hughes</i> <i>County Treasurer</i> .....	JA-6
Complaint and Notice of Appeal, <i>Western Air Lines</i> <i>v. Hughes County Board of Commissioners</i> ...	JA-13
Certified Record, <i>Western Airlines v. Board of</i> <i>Equalization</i> .....	JA-24
Attachment 1: July 18, 1983 Appeal of Western Air Lines .....	JA-26
Attachment 2: July 21, 1983 Hearing on Appeal .....	JA-28
Attachment 3: August 16, 1983 Findings of Fact .....	JA-30
Attachment 4: November 10, 1983 Notice of Appeal .....	JA-32
Stipulation Regarding Future Taxes .....	JA-34
Order Regarding Future Taxes .....	JA-37
Memorandum Decision, Hughes County Circuit Courts .....	13a*
Judgment .....	JA-40
Notice of Entry of Judgment .....	JA-41
Stipulation and Order Consolidating Cases .....	JA-42
Notice of Appeal to Supreme Court of South Dakota .....	JA-61

---

\* Refers to Jurisdictional Statement.

### Table of Contents Continued

Opinion on Appeal .....	1a*
Judgment on Appeal .....	22a*
Notice of Appeal to Supreme Court of the United States .....	23a*

\* Refers to Jurisdictional Statement.

### RELEVANT DOCKET ENTRIES

#### A. List of Cases Appealed

Date Filed	Defendant	Circuit Court & Civil Case No.
<b>Cases filed by Western Airlines</b>		
May 27, 1983	Hughes County Treasurer	Sixth Cir. 83-157
Aug. 5, 1983	Hughes County Board of Commissioners	Sixth Cir. 83-222
May 31, 1983	Pennington County Treasurer	Seventh Cir. 83-307
Aug. 15, 1983	Pennington County Board of Commissioners	Seventh Cir. 83-311
May 31, 1983	Minnehaha County Treasurer	Second Cir. 83-286
June 14, 1983	Minnehaha County Board of Commissioners	Second Cir. 83-291
Sept. 1, 1983	State Board of Equalization	Seventh Cir. 83-343
Sept. 1, 1983	State Board of Equalization	Sixth Cir. 83-244

## JA- 2

Sept. 1, 1983      State Board of  
Equalization      Second Cir. 83-320

**Cases Filed by Frontier Airlines**

Aug. 15, 1983      Pennington  
County Board of      Seventh Cir. 83-  
Commissioners      310

June 2, 1983      Pennington  
County      Seventh Cir. 83-  
Treasurer      308

June 14, 1983      Minnehaha County  
Board of Commis-      Second Cir. 83-292  
sioners

June 3, 1983      Minnehaha County  
Treasurer      Second Cir. 83-287

Sept. 1, 1983      State Board of  
Equalization      Second Cir. 83-317

Sept. 1, 1983      State Board of  
Equalization      Seventh cir. 83-341

**Cases Filed by Ozark Airlines**

June 10, 1983      Minnehaha County  
Board of Commis-      Second Cir. 83-290  
sioners

June 10, 1983      Minnehaha County  
Treasurer      Second Cir. 83-288

Sept. 1, 1983      State Board of  
Equalization      Second Cir. 83-318

**Cases Filed by Republic Airlines**

May 26, 1983      Davison County  
Board of      Fourth Cir. 83-284  
Commissioners

May 24, 1983      Davison County  
Treasurer      Fourth Cir. 83-283

## JA- 3

May 24, 1983      Hughes County  
Treasurer      Sixth Cir. 83-153

Aug. 5, 1983      Hughes County  
Board of      Sixth Cir. 83-221  
Commissioners

Sept. 9, 1983      Codington County  
Board of Commis-      Third Cir. 83-295  
sioners

Aug. 15, 1983      Pennington  
County Board of      Seventh Cir. 83-  
Commissioners      309

June 8, 1983      Minnehaha County  
Board of Commis-      Second Cir. 83-289  
sioners

May 26, 1983      Brown County  
Board of      Fifth Cir. 83-278  
Commissioners

June 22, 1983      Yankton County  
Board of      First Cir. 83-330  
Commissioners

Sept. 16, 1983      Beadle County  
Board of      Third Cir. 83-275  
Commissioners

Aug. 9, 1983      Brookings County  
Board of Commis-      third Cir. 83-281  
sioners

May 24, 1983      Minnehaha County  
Treasurer      Second Cir. 83-285

May 24, 1983      Brown County  
Treasurer      Fifth Cir. 83-277

May 24, 1983      Yankton County  
Treasurer      First Cir. 83-329

May 24, 1983      Beadle County  
Treasurer      Third Cir. 83-276



May 24, 1983	Brookings County Treasurer	Third Cir. 83-282
May 24, 1983	Pennington County Treasurer	Third Cir. 83-306
May 24, 1983	Codington County Treasurer	Third Cir. 83-296
Sept. 1, 1983	State Board of Equalization	Second Cir. 83-319
Sept. 1, 1983	State Board of Equalization	Seventh Cir. 83- 340
Sept. 1, 1983	State Board of Equalization	Fifth Cir. 83-326
Sept. 1, 1983	State Board of Equalization	Third Cir. 83-316
Sept. 2, 1983	State Board of Equalization	First Cir. 83-331

**Cases Filed by Continental Airlines**

Sept. 1, 1983	State Board of Equalization	Seventh Cir. 83- 342
---------------	--------------------------------	-------------------------

**Docket Entries**

*Western Airlines v. Hughes County Treasurer,*  
Sixth Judicial Circuit No. 83-157:

May 27, 1983 Complaint  
June 27, 1983 Answer

*Western Airlines v. Hughes County Board of Com-  
missioners,* Sixth Judicial Circuit No. 83-22:

Aug. 4, 1983 Complaint  
Notice of Appeal

*In the Matter of The Appeal of Western Airlines, Inc.,  
From the Decision of the State Board of Equalization,* Sev-  
enth Judicial Circuit No. 83-343:

Aug. 31, 1983 Notice of Appeal  
Nov. 10, 1983 Certification of Record

**Consolidated Cases:**

Nov. 18, 1983 Stipulation  
Nov. 23, 1983 Order  
Feb. 7, 1984 Memorandum Decision  
Feb. 23, 1984 Judgment  
March 9, 1984 Notice of Entry of Judgment  
April 9, 1984 Stipulation and Order  
April 9, 1984 Notice of Appeal  
Dec. 21, 1982 Opinion on Appeal  
July 31, 1985 Judgment  
Oct. 9, 1985 Notice of Appeal

**IN CIRCUIT COURT  
SIXTH JUDICIAL CIRCUIT**

**STATE OF SOUTH DAKOTA  
COUNTY OF HUGHES**

WESTERN AIR LINES, INC., a corporation,  
*Plaintiff,*

vs.

HUGHES COUNTY, SOUTH DAKOTA and RICHARD BUD RAY,  
as Treasurer of Hughes County,  
*Defendants.*

**COMPLAINT**

COMES NOW, the above entitled Plaintiff and for its cause of action against the Defendants, states and alleges as follows:

**I.**

That Western Air Lines, Inc. is a duly organized corporation authorized to do business in the State of South Dakota as an air carrier.

**II.**

That Hughes County is a duly organized County, organized under the laws of the State of South Dakota.

**III.**

The Richard Bud Ray is the duly elected and acting Treasurer of Hughes County and is the party who collected the taxes hereinafter referred to.

**IV.**

That said Plaintiff air carrier, transacted business in South Dakota during 1982 and maintained air carrier transportation property within South Dakota during said year.

**V.**

That Hughes County levied and collected airline flight property taxes from the Plaintiff for the year 1982, and the Plaintiff paid the first half of said tax in the amount of \$ 2,885.57, which payment was sent by the Plaintiff on April 29, 1983 and received by the Defendants on May 5, 1983.

**VI.**

That at the time of the payment of said tax, the Plaintiff paid the same under protest as permitted by SDCL 10-27-2. The protest notice sets forth generally the bases of protest as hereinafter referred to.

**VII.**

Under the provisions of SDCL Chapter 10-4, commercial and industrial personal property is exempt from ad valorem taxation, effectively reducing the property tax rate on such property to zero.

**VIII.**

Section 1113 of the Federal Aviation Act of 1958 (49 U.S.C. 1513) as amended by Section 532 of the Tax Equity and Fiscal Responsibility Act of 1982, places restrictions upon the various states' and local governments' assessment, levy and collection of taxes on air carrier transportation property, effective September 3, 1982. The

federal statute preempts and is controlling over any state statutes purporting to authorize such taxation.

### IX.

That the federal statutes above mentioned prohibit a State, or a sub-division of a State, from assessing air carrier transportation property at a higher ratio than other commercial and industrial property, levying or collecting a tax on such prohibited assessment, and levying or collecting a tax on air carrier transportation property at a tax rate exceeding that applied to other commercial and industrial property.

### X.

That by assessing, levying and collecting the tax paid under protest by the Plaintiff, this Defendant County and its Treasurer named above, attempted to levy and collect tax upon the Plaintiff's air carrier transportation property, and to treat the same differently than similar property which is otherwise exempt from taxation pursuant to South Dakota statute, thereby violating the federal statutes above referred to, and discriminating against the Plaintiff.

### XI.

The Plaintiff's property taxed hereunder is used in interstate commerce; therefore, the Defendant's assessment, levy and collection of taxes upon the same is violative of the Constitutions of the United States and the State of South Dakota.

### XII.

By federal law the State and County are specifically prohibited from the taxation imposed against and collected from the Plaintiff herein and paid under protest; thus the imposition and collection of the tax by the Defendants is

null and void and the monies paid by the Plaintiff should be reimbursed to it.

WHEREFORE, the Plaintiff prays that this Court grant Plaintiff a Judgment ordering Defendants to reimburse the tax monies paid by the Plaintiff and more specifically set forth above; and by its Judgment forbid further assessments and collection efforts against this Plaintiff by said County and its Treasurer; and declare the Defendants' attempt to tax and recover these sums from Plaintiff null and void; and for such other and further relief as to this Court may seem just and proper.

DATED this 27th day of May, 1983.

RITER, MAYER, HOFER & RITER

By: /s/Robert C. Riter, Jr.  
ROBERT C. RITER

and: /s/R. C. Riter  
Members of said firm  
319 S. Coteau - P.O. Box 280  
Pierre, SD 57501-0280  
Attorneys for Plaintiff



**IN CIRCUIT COURT  
SIXTH JUDICIAL CIRCUIT**

**STATE OF SOUTH DAKOTA  
COUNTY OF HUGHES**

CIV. NO. \_\_\_\_\_

WESTERN AIRLINES, INC. a corporation,  
*Plaintiff,*  
vs.

HUGHES COUNTY, SOUTH DAKOTA and RICHARD "BUD" RAY  
as County Treasurer,  
*Defendants.*

**DEFENDANTS'  
ANSWER**

Comes now the Hughes County States Attorney and the Attorney General of South Dakota on behalf of the Defendants herein and for answer to the Complaint of the Plaintiff states and alleges as follows:

**I**

Denies all allegations of Plaintiff's Complaint except those specifically admitted herein.

**II**

Admits paragraphs I, II, III, IV, V, VI, VIII of Plaintiff's Complaint.

**III**

As to paragraph VII of Plaintiff's Complaint, Defendants admit that certain commercial and industrial personal property is exempt under the provisions of SDCL 10-4; however, Defendants deny that the exemption extends to that personal property which is "centrally assessed".

**IV**

As to paragraph IX of Plaintiff's Complaint, Defendants admit that 49 USC 1513 as amended by Section 532 of the Tax Equity and Fiscal Responsibility Act of 1982 restricts the ability of a state to unreasonably burden and discriminate against interstate commerce but denies that the state which makes the assessment of airline flight property and the Defendants which collect the tax do any of those things.

**V**

Defendants deny specifically paragraphs X, XI and XII of the Plaintiff's Complaint and allege that the tax in issue is a tax based on the use of Plaintiff's property in this state and such tax when collected is utilized wholly for airport and aeronautical purposes and is in lieu of property taxes and is therefore permitted by 49 USC 1513(d)(3).

WHEREFORE, Defendants pray that the Court determine the tax in issue is an in lieu of tax and is specifically permitted under federal and state law and therefore dismiss the Complaint of the Plaintiff.



STEVEN ZINTER  
Hughes County States Attorney

/s/John Dewell

JOHN DEWELL  
Assistant Attorney General  
Attorneys for Defendants  
700 N. Illinois  
Pierre, SD 57501

**IN CIRCUIT COURT  
SIXTH JUDICIAL CIRCUIT**

**STATE OF SOUTH DAKOTA  
COUNTY OF HUGHES**

WESTERN AIR LINES, INC., a corporation,  
*Plaintiff,*

vs.

HUGHES COUNTY, SOUTH DAKOTA and its BOARD OF  
COMMISSIONERS, D.J. HULL, WARREN HUNSLEY, QUENTIN  
YOUNGBERG, RICHARD CARTER and KEITH GARBER,  
*Defendants.*

**COMPLAINT**

COMES NOW, the above entitled Plaintiff and for its  
cause of action against the Defendants, states and alleges  
as follows:

**I.**

That Western Air Lines, Inc. is a duly organized cor-  
poration authorized to transact business in the State of  
South Dakota as an air carrier.

**II.**

That Hughes County is a duly organized County orga-  
nized under the laws of the State of South Dakota.

**III.**

That D. J. Hull, Warren Hunsley, Quentin Youngberg,  
Richard Carter and Keith Garber, are the duly elected and  
acting Board of Commissioners for Hughes County, South  
Dakota.

## IV.

That said Plaintiff air carrier transacted business in South Dakota during 1982 and maintained air carrier transportation property within South Dakota during said year.

## V.

That Hughes County levied and collected airline flight property taxes from the Plaintiff for the year 1982, and the Plaintiff paid the first half of said tax in the amount of \$3,995.57 on May 5, 1983.

## VI.

That at the time of the payment of said tax the Plaintiff paid the same under protest as permitted by SDCL 10-27-2. Further, the Plaintiff thereafter and on or about April 26, 1983 by letter to the Board of County Commissioners applied for abatement or refund of property in accordance with SDCL 10-18.

## VII.

A copy of the application, which describes the tax and property involved and the grounds for abatement or refund, is attached hereto as Exhibit A and incorporated herein by reference.

## VIII.

The Board of County Commissioners of Hughes County, on or about July 18, 1983 entered a decision denying the request for abatement. A copy of such decision is labeled Exhibit B and attached hereto and incorporated herein by reference.

## IX.

That the property sought to be taxed by the above named County is exempt from tax as more specifically described hereafter.

## X.

Under the provisions of SDCL Chapter 10-4, commercial and industrial personal property is exempt from ad valorem taxation, effectively reducing the property tax rate on such property to zero.

## XI.

Section 1113 of the Federal Aviation Act of 1958 (49 U.S.C. 1513) as amended by Section 532 of the Tax Equity and Fiscal Responsibility Act of 1982, places restrictions upon the various states' and local governments' assessment, levy and collection of taxes on air carrier transportation property, effective September 3, 1982. The federal statute preempts and is controlling over any state statutes purporting to authorize such taxation.

## XII.

That the federal statutes above mentioned prohibit a State, or a sub-division of a State, from assessing air carrier transportation property at a higher ratio than other commercial transportation property, levying or collecting a tax on such prohibited assessment, and levying or collecting a tax on air carrier transportation property at a tax rate exceeding that applied to other commercial and industrial property.

## XIII.

That by assessing, levying and collecting the tax paid under protest by the Plaintiff, this Defendant County lev-

ied and collected taxes upon the Plaintiff's air carrier transportation property, and treated the same differently than similar property which is otherwise exempt from taxation pursuant to South Dakota statute, thereby violating the federal statutes above referred to, and discriminating against the Plaintiff.

#### XIV.

The Plaintiff's property taxed hereunder is used in interstate commerce; therefore, the Defendants' assessment, levy and collection of taxes upon the same is violative of the Constitutions of the United States and the State of South Dakota.

#### XV.

By federal law the State and County are specifically prohibited from the taxation imposed against and collected from the Plaintiff herein and paid under protest; thus the imposition and collection of the tax by the Defendants is invalid and the monies paid by the Plaintiff should be reimbursed to it.

WHEREOF, the Plaintiff prays that this Court order that the Auditor of the above named County issue and deliver to Plaintiff a refund of the tax monies paid by the Plaintiff and more specifically set forth above, further, that by its judgment the Court forbid further assessments and collection efforts against this Plaintiff by said County, and declare the Defendants' attempt to tax and collect these sums from Plaintiff invalid and thus null and void; and for such other and further relief as to this County may seem just and proper.

DATED this 4th day of August, 1983.

RITER, MAYER, HOFER & RITER

By: /s/

and: /s/ROBERT RITER, JR.  
Members of said firm  
319 S. Coteau—P.O. box 280  
Pierre, SD 57501-0280  
*Attorneys for Plaintiff*

#### EXHIBIT A

Western Airlines

April 26, 1983

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Board of County Commissioners  
c/o County Auditor  
Hughes County  
Pierre, SD 57501

Gentlemen:

This letter will constitute an Application for Abatement/ Refund of Property Tax in accordance with SDCL, Chapter 10-18.

In submitting this Application, we are respectfully requesting abatement/refund of property tax in the amount of \$7,771.14. Such property tax was levied on the Company's aircraft for the year 1982.

Section 1113(d) of the Federal Aviation Act of 1958, as amended by section 532 of the Tax Equity and Fiscal Responsibility Act of 1982 (copy attached), places restrictions on the assessment and taxation of air carrier transportation property effective September 3, 1982. The legislation prohibits a State or subdivision of a State from 1) assessing air carrier transportation property at a higher ratio than other commercial and industrial property, 2)



levying or collecting a tax on such prohibited assessment, and 3) levying or collecting a tax on air carrier transportation property at a tax rate which exceeds that applied to other commercial and industrial property.

Under the provisions of SDCL, Chapter 10-4, commercial and industrial personal property is exempt from and valorem taxation, effectively reducing the property tax rate to zero on such property. In compliance with the Federal legislation described above, the tax rate on air carrier transportation property must also be reduced to zero effective September 3, 1982. As explained in the attached letter from the United States Senate dated December 2, 1982, the provisions of the Federal legislation are applicable to taxes levied or collected after September 2, 1982.

Board of County Commissioners  
April 26, 1983  
Page Two

Your favorable consideration of our request for abatement/ refund of 1982 property tax would e sincerely appreciated.

Very truly yours,

WESTERN AIR LINES, INC.

/s/G. L. STEWART  
G. L. Stewart  
Vice President  
and Controller

DLH:jk

STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

G. L. Stewart, being first duly sworn upon oath, deposes and states that he is the Vice President and Controller of Western Air Lines, Inc., and as such is duly authorized to execute this document, that this document has been examined by him, and that the statements of fact made above, to the best of his knowledge and belief, are true, correct and complete.

**UNITED STATES SENATE  
COMMITTEE ON COMMERCE, SCIENCE,  
AND TRANSPORTATION**

**WASHINGTON, D.C. 20510**

December 21, 1982

Mr. Paul R. Ignatius  
President  
Air Transport Association  
of America  
1709 New York Avenue, N.W.  
Washington, D.C. 20006

Dear Mr. Ignatius:

You have requested, on behalf of your airline members, clarification of the legislative intent of Section 532 of the Tax Equity and Fiscal Responsibility Act of 1982 (the "Act") concerning the assessment, levying or collecting of ad valorem flight property taxation of airline companies.

The purpose of the Act is to prevent the continued discrimination of ad valorem taxation of airline flight property. However, the Act must be interpreted in a manner that recognizes that all states do not have the same timetable for assessing and collecting such taxes. It was not intended to require a state to refund property taxes which have been levied and collected prior to the effective date of the Act, September 3, 1982.

The legislative intent is supported by Subparagraphs (B) and (C) of the Act which provide that relief from discriminatory assessments must be made when the taxes have not been actually levied and collected before the effective date of the Act. Furthermore, the purpose of Subparagraph (A) was to preclude discriminatory assessments, in the event they had not been made by September 3, 1982.

Unless a state has levied and collected discriminatory ad valorem flight property taxes on airline companies before September 3, 1982, that method of taxation should not be in effect during 1982.

Sincerely,

/s/NORMAN Y. MINETA  
NORMAN Y. MINETA

/s/BOB PACKWOOD  
BOB PACKWOOD

/s/NANCY LANDON KASSEBAUM  
NANCY LANDON KASSEBAUM

/s/HOWARD W. CANNON  
HOWARD W. CANNON

**EXHIBIT B**

**OFFICE OF  
THE COUNTY AUDITOR  
HUGHES COUNTY  
PIERRE, SOUTH DAKOTA**

July 18, 1983

Mr. G.L. Stewart  
Vice President and Controller  
Western Airlines, Inc.  
P.O. Box 92005  
World Way Postal Center  
Los Angeles, CA 90009

Re: Rejection of Application for Abatement/Refund of  
Property Tax dated April 26, 1983

Dear Mr. Stewart:

Please be advised that your application for abatement/refund of property tax has been denied by majority vote of the Hughes County Commission, as said property is not exempt from taxation under law.

Yours very truly,

/s/D Hull  
Chairman  
Hughes County Commission

**IN CIRCUIT COURT  
SIXTH JUDICIAL CIRCUIT**

**STATE OF SOUTH DAKOTA  
COUNTY OF HUGHES**

WESTERN AIR LINES, INC., a corporation,  
*Plaintiff,*  
vs.

HUGHES COUNTY, SOUTH DAKOTA and its BOARD OF  
COMMISSIONERS, D.J. HULL, WARREN HUNSLEY, QUENTIN  
YOUNGBERG, RICHARD CARTER and KEITH GARBER,  
*Defendants.*

**NOTICE OF APPEAL**

COMES NOW, Western Air Lines, Inc., by and through its attorneys, RITER, MAYER, HOFER & RITER of Pierre, South Dakota, and hereby gives Notice of its Appeal from the decision of the Board of County Commissioners denying its request for abatement and refund of airline flight property taxes paid on May 5, 1983. That the bases for such appeal are as specified in the Summons and Complaint attached hereto and served and filed contemporaneously herewith.

DATED this 4th day of August, 1983.

RITER, MAYER, HOFER & RITER

By: /s/Rich Riter  
RICH RITER

and: /s/Robert C. Riter, Jr.  
Members of said firm  
319 S. Coteau - P.O. Box 280  
Pierre, SD 57501-0280  
Attorneys for Plaintiff



**IN CIRCUIT COURT  
SEVENTH JUDICIAL CIRCUIT**

**STATE OF SOUTH DAKOTA  
COUNTY OF PENNINGTON**

IN THE MATTER OF THE APPEAL OF WESTERN AIR LINES,  
INC. FROM THE DECISION OF THE STATE BOARD OF  
EQUALIZATION.

**CERTIFICATION OF RECORD**

Comes now R. Van Johnson, duly appointed, qualified and acting Secretary of Revenue of the State of South Dakota and as such, Secretary Ex-Officio Secretary of the State Board of Equalization, and certifies the within record to the Court pursuant to SDCL 10-11-43. The above airline appealed to the State Board of Equalization from the decision of the Department of Revenue respecting its property and the assessment thereof in this state, Attachment 1. The State Board of Equalization held a hearing on the appeal of the Appellants herein as further evidenced by the Minutes of the State Board of Equalization, included here as Attachment 2. Following such hearing on August 17, 1983, the State Board of Equalization entered Findings of Fact, Conclusions of Law and ordered that the appeal be denied and the valuation set by the Department of Revenue be sustained, Attachment 3. The Minutes of the State Board of Equalization were filed on September 8, 1983. Notice of Appeal was given by the Appellants herein from the decision of the State Board of Equalization on September 1, 1983, Attachment 4. All documents herein certified to the Court are the originals presented to the State Board of Equalization or true and correct copies of the same.

Dated this \_\_\_\_day of November, 1983.

/s/R. Van Johnson  
R. VAN JOHNSON  
Secretary of Revenue  
Ex-Officio Secretary of the  
Board of Equalization

July 18, 1983

Mr. R. Van Johnson  
 Secretary  
 Department of Revenue  
 State Board of Equalization  
 Kneip Building  
 700 N. Illinois  
 Pierre, SD 57501

Re: Western Air Lines, Inc.

Dear Mr. Johnson:

We write to you on behalf of our client, Western Air Lines, Inc.

Our client has received your letter of July 5, 1983 assessing the true and full value of the property of that company for 1983 in the sum of \$2,762,008.00. Our client is aggrieved by the action of the State Department of Revenue as to the Department's determination of value and assessment of value so as to impose airline flight property tax upon our client. Hence, we write this letter to you and appeal to the State Board of Equalization for a determination of our grievance.

We appeal from the determination of taxable value and the assessment placed thereupon, inasmuch as Section 1113 of the Federal Aviation Act of 1958 (U.S.C. 1513) as amended by section 532 of the Tax Equity and Fiscal Responsibility Act of 1982, specifically restricts the State of South Dakota and the various local governments from assessing, levying and collecting the tax sought to be imposed. As we have previously advised you, federal statutes prohibit the assessment of air carrier transportation property at a higher ratio than other commercial transportation property. Inasmuch as the State of South Dakota has exempted commercial and industrial personal

Mr. R. Van Johnson

July 18, 1983

Page two

property from ad valorem taxation, effectively reducing the property tax rate on such property to zero, if the Department of Revenue is able to assess our client's property and impose a tax thereupon, such tax would be of a rate greater than that of similar property within the State and would discriminate against our client and other airlines. As such, we submit that your assessment and attempt to impose, levy and collect these taxes is violative of the Constitutions of the United States and the State of South Dakota and is preempted specifically by the federal statutes mentioned above. As such, the assessment and imposition is invalid, null and void.

We would ask that the Board of Equalization consider this appeal and set an appropriate date for hearing the question.

Thank you very much for your consideration.

Very truly yours,

RITER, MAYER, HOFER & RITER

By: Rick Riter, Jr.

RICK RITER JR.

RCR Jr-wo

cc: Mary L. Sullivan

## AIRLINES APPEAL

Appeals #68-#72

Appearing for Appellants: Robert C. Riter, Jr.,  
Attorney

Appearing for State: Dennis Hanson, Utilities  
evaluator  
Department of Revenue

Date of Hearing: July 21, 1983 All Duly  
Sworn

Appeal to the State Board of Equalization from the assessment of (#68) Frontier Airlines, Inc., (#69) Continental Airlines Corporation, (#70) Republic Airlines, Inc., (#71) Ozark Air Lines, Inc., and (#72) Western Air Lines, Inc. as placed thereon by the Department of Revenue

Dennis Hanson of the Department of Revenue discussed assessment procedures. He stated that these are unit type assessments on which tax is computed by applying levy. The property consists of the aircraft themselves, and the taxes collected are turned over to local airports for maintenance, etc. An allocation formula is used in distributing the funds.

Robert Riter, Jr., Attorney for the Appellants, stated that the appeal is the result of an amendment (Section 532 of the Tax Equity and Fiscal Responsibility Act of 1982) to Section 1113 of the Federal Aviation Act of 1958, which restricts the State of South Dakota and its local governments from assessing, levying and collecting taxes sought to be imposed. Noted in Mr. Riter's letter of July 19, 1983 was previous advisement to the State Board that "federal statutes prohibit the assessment of air carrier transportation property at a higher ratio than other commercial transportation property". In assessing Appellants' properties, taxes would be greater than those on other commercial property and would therefore be discriminatory and invalid.

John Dewell, Attorney for the Department of Revenue, advised that this tax is an "in lieu of" tax and therefore the statutes referred to above are inapplicable.

IT WAS MOVED by Arthur Anderson, seconded by Arnold Janssen to deny the appeals. Roll call vote: all ayes, MOTION CARRIED.



August 16, 1983  
 Western Airlines, Inc.  
 c/o Riter, Mayer, Hofer & Riter  
 Professional & Executive Bldg.  
 PO Box 280  
 Pierre, SD 57501-0280

RE: Appeal to the State Board of Equalization from the action of the South Dakota Department of Revenue on the assessment of Western Airlines Inc. operating property in the State of South Dakota.

Notice of Appeal having been given by Appellant, Western Airlines, Inc. from the action of the Department of Revenue relative to the assessment of certain property described in such appeal and the State Board of Equalization having considered the matter and all evidence presented and being fully advised in the premises now makes the following Findings of Fact, Conclusions of Law and Order.

#### FINDINGS OF FACT

That the appellant's contention is that the property in question is exempt from taxation under the 1982 Tax Equity and Fiscal Responsibility Act which amended Section 1113 of the Federal Aviation Act of 1958 (49 USC1513).

That flight property in South Dakota is assessed on a use basis pursuant to SDCL 10-29.

That the apportionment to the State of the value of the airline flight property is done on a basis of the use of such property in this state based on the ratio of total tonnage of passengers, express and freight for the calendar year first received in this state plus the same elements discharged in this state compared to the total of such tonnage received or discharged without the state during the preceeding calendar year; the ratio of flight time of all aircraft serving the state to the flight time of aircraft within and without the state during the preceeding calendar year; the ratio of the number of revenue ton miles

of passenger mail express and freight flown by the airline company on flights serving the state to the total number of such miles flown within and without the state during the preceeding calendar year.

That the tax imposed pursuant to 10-29 is allocated to airports in the state, 25% on an equal basis and 75% on the basis of the ratio of the total tonnage of passenger mail, express and freight received and discharged at each airport in this state to the total tonnage of the same at all airports in this state and that such proceeds are pursuant to SDCL 10-29-15 used exclusively by airports for airport purposes as determined by the local governing body and approved by the Department of Transportation.

That after equalization an average mill rate is computed by dividing the total taxable valuation of all property for the preceeding year within the state into the total of all state and local taxes levied within the state on a millage basis for the present year and the same is then applied to the valuation based on the use of the aircraft in this state.

#### CONCLUSIONS OF LAW

That there is no unreasonable burden and discrimination against interstate commerce.

That the airline flight property tax is in lieu of personal property tax and is totally utilized for airport and aeronautical purposes, therefore, in conformity with Section (d)(3), this tax is lawful and not a violation of Federal law.

Therefore it is

ORDERED that the appeal be denied and the valuation set by the Department of Revenue be sustained.

/s/R. Van Johnson

R. VAN JOHNSON  
 Secretary of Revenue

**IN CIRCUIT COURT  
SEVENTH JUDICIAL CIRCUIT**

**STATE OF SOUTH DAKOTA  
COUNTY OF PENNINGTON**

IN THE MATTER OF THE APPEAL OF WESTERN AIR LINES,  
INC. FROM THE DECISION OF THE STATE BOARD OF  
EQUALIZATION.

**NOTICE OF APPEAL**

COMES NOW, Western Air Lines, Inc., by and through its attorneys, RITER, MAYER, HOFER & RITER of Pierre, South Dakota, and hereby gives Notice of its Appeal from the Findings of Fact, Conclusions of Law and Decision of the State Board of Equalization dated August 16, 1983 denying said airlines' petition to exempt its airline flight property from taxation. The bases for the appeal are as shown on Exhibit A, attached hereto and incorporated herein by reference.

DATED this 31st day of August, 1983.

RITER, MAYER, HOFER & RITER

By: /s/Robert Riter, Jr.  
ROBERT RITER, JR.

and: /s/R.C. Riter  
Members of said firm  
319 S. Coteau - P.O. Box  
280  
Pierre, SD 57501-0280  
Attorneys for Western Air  
Lines, Inc.

**EXHIBIT A**

We appeal from the determination of taxable value and the assessment placed thereupon, inasmuch as Section 1113 of the Federal Aviation Action of 1958 (U.S.C. 1513) as amended by section 532 of the Tax Equity and Fiscal Responsibility Act of 1982, specifically restricts the State of South Dakota and the various local governments from assessing, levying and collecting the tax sought to be imposed. Federal statutes prohibit the assessment of air carrier transportation property at a higher ratio than other commercial transportation property. Inasmuch as the State of South Dakota has exempted commercial and industrial personal property from ad valorem taxation, effectively reducing the property tax rate on such property to zero, if the Department of Revenue is able to assess our client's property and impose a tax thereupon, such tax would be of a rate greater than that of similar property within the State and would discriminate against our client and other airlines. As such, we submit that the assessment and attempt to impose, levy and collect these taxes is violative of the Constitutions of the United States and the State of South Dakota, is discriminatory, and is preempted specifically by the federal statutes mentioned above. As such, the assessment and imposition is invalid, null and void.

We also object to the Findings of Facts and Conclusions of Law of the State Board of Equalization as being wholly in error.



**IN CIRCUIT COURT  
SIXTH JUDICIAL CIRCUIT**

**STATE OF SOUTH DAKOTA  
COUNTY OF HUGHES**

WESTERN AIR LINES, INC., a corporation, *et al.*  
*Plaintiffs,*  
vs.

HUGHES COUNTY, SOUTH DAKOTA and its BOARD OF  
COMMISSIONERS, D. J. HULL, WARREN HUNSLEY, QUENTIN  
YOUNGBERG, RICHARD CARTER and KEITH GARBER, *et al.*,  
*Defendants.*

**STIPULATION**

It is hereby stipulated by and between Western Air Lines, Inc., Republic Airlines, Inc. and Frontier Airlines, Inc., by and through their attorneys, RITER, MAYER, HOFER & RITER of Pierre, South Dakota, and the following Defendant Counties and their Boards of Commissioners named by Western Air Lines, Inc., being Hughes County, Pennington County and Minnehaha County, and the following Defendant Counties and their Boards of Commissioners named by Republic Airlines, Inc., being Brown County, Brookings County, Beadle County, Davison County, Hughes County, Pennington County, Minnehaha County, Codington County and Yankton County and the following Defendant Counties and their Boards of Commissioners named by Frontier Airlines, Inc., being Minnehaha County and Pennington County, by and through the attorney appearing for those Defendants in this action, Assistant Attorney General John Dewell, as follows:

WHEREAS, the Plaintiffs have previously requested abatement and refund of airline flight property taxes due and owing during 1983, and

WHEREAS, the respective Counties and their Boards of Commissioners have previously denied in full the airlines requests for abatement and refund of the taxes due in 1983, and

WHEREAS, the above entitled airlines have now paid the second half payment due on November 1, 1983, that it is hereby

STIPULATED AND AGREED by and between the parties hereto that the Notice of Appeal filed herein shall be and is hereby amended to show that the November 1, 1983 payment has been made; and it is further

STIPULATED AND AGREED that this litigation shall be an appeal from the respective Commissions' previous denials to abate the respective airlines' tax, and further from the denials of the Commissioners to refund those monies paid on or about May 1, 1983, as well as those paid on or about November 1, 1983; and it is further

STIPULATED AND AGREED that the prior decision entered by each Board of Commissioners to deny the abatement and refund may apply to the payments due November 1, 1983; and it is further

STIPULATED AND AGREED that the Plaintiffs may proceed herein as if all statutory requirements had been complied with on the appeal from the denials of the abatement and refund as regards the payments due on November 1, 1983; and it is further

STIPULATED AND AGREED that the pleadings herein may be amended so as to include not only the payments due on November 1, 1983, but all future payments hereinafter made by the Plaintiffs, until this litigation is finally resolved.

DATED this 18th day of November, 1983.

RITER, MAYER, HOFER & RITER



By: /s/Robert C. Riter, Jr.  
ROBERT C. RITER, JR.

and: /s/R.C. Riter  
Attorneys for the Plaintiffs

/s/John Riter  
Attorney for the Defendants

**IN CIRCUIT COURT  
SIXTH JUDICIAL CIRCUIT**

**STATE OF SOUTH DAKOTA  
COUNTY OF HUGHES**

**ORDER**

Upon the reading and filing of the Stipulation of the parties, Western Air Lines, Inc., Republic Airlines, Inc., and Frontier Airlines, Inc., by and through their attorneys, RITER, MAYER, HOFER & RITER of Pierre, South Dakota, and the following Defendant Counties and their Treasurers named by Western Air Lines, Inc., being Hughes County, Pennington County and Minnehaha County, and the following Defendant Counties and their Treasurers named by Republic Airlines, Inc., being Brown County, Brookings County, Seadle County, Davison County, Hughes County, Pennington County, Minnehaha County, Codington County and Yankton County and the following Defendant Counties and their Treasurers named by Frontier Airlines, Inc., being Minnehaha County and Pennington County, by and through the attorney appearing for those Defendants in this action, Assistant Attorney General John Dewell, and good cause appearing therefor, it is hereby

ORDERED that the Complaints filed herein may be and hereby are amended to show that the November 1, 1983 payments owing by each of the above airlines, have now been made, with the same being paid under protest; and it is further

ORDERED that the prior Notices of Protest shall apply to the November 1, 1983 payment; and it is further

ORDERED that the Plaintiffs may proceed as if all statutory requirements had been complied with on the No-

tices of Protest as regards the November 1, 1983 payments; and it is further

ORDERED that the pleadings herein may be amended so as to include not only the payments due on November 1, 1983, but all future payments hereinafter made by the Plaintiffs, until this litigation is finally resolved.

DATED this 23rd day of November, 1983.

BY THE COURT:

/s/Robert A. Miller

Judge

ATTEST:

/s/Mary L. Erickson

Clerk

**Memorandum Decision, Sixth Judicial  
Circuit (Hughes County)**

**SEE JURISDICTIONAL STATEMENT, APP. B**

**IN CIRCUIT COURT  
SIXTH JUDICIAL CIRCUIT**

**STATE OF SOUTH DAKOTA  
COUNTY OF HUGHES**

**JUDGMENT**

This action came on before the court the Honorable Robert A. Miller, Presiding Circuit Judge, and the issues having been duly tried and a decision having been rendered

IT IS ORDERED AND ADJUDGED, that the Plaintiff take nothing and the action be dismissed on the merits.

Dated at Pierre, South Dakota this 23rd day of February, 1984.

BY THE COURT:

/s/Robert A. Miller  
Presiding Judge

ATTEST:

/s/Mary L. Erickson  
Clerk

By Laura Hildebrandt  
Deputy

**IN CIRCUIT COURT  
SIXTH JUDICIAL CIRCUIT**

**STATE OF SOUTH DAKOTA  
COUNTY OF HUGHES**

**NOTICE OF ENTRY OF  
JUDGMENT**

Take notice that a Judgment in the above entitled matter was filed in the Office of the Clerk of the Circuit Court, Hughes County, South Dakota on the 23rd day of February, 1984, in favor of the Defendants as above noted and attached hereto.

Dated this 9 day of March, 1984.

/s/John Dewell  
John Dewell  
Assistant Attorney General



**IN CIRCUIT COURT  
SIXTH JUDICIAL CIRCUIT**

**STATE OF SOUTH DAKOTA  
COUNTY OF HUGHES**

**STIPULATION AND ORDER**

IT IS HEREBY STIPULATED by and between RITER, MAYER, HOFER & RITER, attorneys for the Plaintiffs, Western Air Lines, Republic Airlines, Ozark Air Lines, Continental Airlines, and Frontier Airlines, and John Dewell representing the Defendants listed on the attached Exhibit "A", which is incorporated herein by reference, and particularly the Defendant Counties, Hughes County and Yankton County, and their commissioners and treasurers, as follows:

WHEREAS, this Court has previously entered a Memorandum Decision regarding those matters shown on the attached Exhibit "A", and

WHEREAS, it was the intent of the Court and the parties hereto to include in said Memorandum Decision all of those cases listed on the attached Exhibit "A", inclusive, and

WHEREAS, it appears that the Order entered in the matters of Republic Airlines vs. Hughes County and Richard Ray, its County Treasurer, Republic Airlines vs. Hughes County and its Board of Commissioners, et al., as well as Western Air Lines vs. Hughes County and Richard Ray, its County Treasurer, unintentionally omitted the language consolidating those three actions with the actions otherwise shown on the attached Exhibit "A", although the Stipulations themselves did request consolidation but the Order inadvertently omitted the same, and

WHEREAS, the action of Republic Airlines vs. Yankton County and its Board of Commissioners, et al., does not presently include a Stipulation and Order providing for its consolidation with the other cases listed on the attached Exhibit "A", and

WHEREAS, the appeal of Western Air Lines to Hughes County, South Dakota from the decision of the State Board of Equalization had an Order prepared consolidating the same with those cases listed on the attached Exhibit "A", which Order inadvertently never received the Court's signature, and that it is hereby

AGREED by and between the parties hereto that the cases of Republic Airlines vs. Hughes County and its Treasurer, Richard Ray, Republic Airlines vs. Hughes County and its Board of Commissioners, et al., Western Air Lines vs. Hughes County and its Treasurer, Richard Ray, Republic Airlines vs. Yankton County and its Board of Commissioners, et al., and the appeal of Western Air Lines from the Decision of the State Board of Equalization to Hughes County, may be consolidated and tried with the cases listed on the attached Exhibit "A" and likewise that the Memorandum Decision entered by the Court in this action and the Order and notice thereof entered by the Court, shall apply to all of the cases listed on the attached Exhibit "A", including but not limited to those five matters additionally mentioned herein.

IT IS FURTHER AGREED by the parties that copies of this Stipulation and Order may be filed in each of the five cases named particularly herein, with the same force and effect as if originals thereof were set out.

DATED this 9th day of April, 1984.

RITER, MAYER HOFER & RITER

By: /s/R. C. Riter

R. C. RITER  
 and: Robert C. Riter, Jr.  
 Members of said firm  
 319 S. Coteau - P.O. Box 280  
 Pierre, SD 57501-0280

/s/John Dewell  
 Assistant Attorney General  
 Office of Attorney General  
 State Capitol  
 Pierre, SD 57501  
 Attorney for Defendants

### ORDER

Upon the foregoing Stipulation and attached Exhibit "A", and good cause appearing therefore, it is hereby

ORDERED that the venue of the action entitled Republic Airlines, Inc. vs. Yankton County, South Dakota and its Board of Commissioners, et al., shall be and hereby is charged to Hughes County, and it is further

ORDERED that the cases of Republic Airlines vs. Hughes County and its treasurer, Richard Ray, Republic Airlines vs. Hughes County and its Board of Commissioners, et al., Republic Airlines vs. Yankton County and its Board of Commissioners, Western Air Lines vs. Hughes County and its treasurer, Richard Ray, and the appeal of Western Air Lines, Inc. from the decision of the State Board of Equalization to Hughes County, shall be, and hereby are, consolidated with those cases as shown on the attached Exhibit "A", which is incorporated herein by reference, and it is further

ORDERED that this Order of Consolidation shall be applicable to and shall apply in all respects to the Memorandum Decision entered by the Court herein, as well as the written Order given by this Court and notice thereof given by said Defendants, and it is further

ORDERED that a copy of this Stipulation and Order may be filed in those cases particularly named herein, with the same force and effect as if an original Order was entered and set out therein.

DATED this 9th day of April, 1984.

BY THE COURT:

/s/Robert A. Miller  
 Judge

ATTEST:

/s/Mary L. Erickson  
 Clerk

## EXHIBIT "A"

STATE OF SOUTH DAKOTA      IN CIRCUIT COURT  
    SECOND  
    JUDICIAL CIRCUIT

COUNTY OF MINNEHAHA  
 WESTERN AIRLINES, INC.  
 a corporation,  
     Plaintiff,

vs.

CIV. 83-286

MINNEHAHA COUNTY, SOUTH DAKOTA  
 and DeLORIS ERICKSON, as  
 County Treasurer,  
     Defendants.

\*\*\*\*\*

STATE OF SOUTH DAKOTA      IN CIRCUIT COURT  
    SEVENTH  
    JUDICIAL CIRCUIT

COUNTY OF PENNINGTON  
 WESTERN AIR LINES, INC.,  
 a corporation,  
     Plaintiff,

vs.

CIV. 83-307

PENNINGTON COUNTY, SOUTH  
 DAKOTA and WINONA BRADY, as  
 Treasurer of Pennington  
 County,  
     Defendants.

\*\*\*\*\*

STATE OF SOUTH DAKOTA      IN CIRCUIT COURT  
    SIXTH  
    JUDICIAL CIRCUIT

COUNTY OF HUGHES  
 WESTERN AIR LINES, INC.,  
 a corporation,  
     Plaintiff,

vs.

CIV. 83-157

HUGHES COUNTY, SOUTH DAKOTA  
 and RICHARD BUD RAY, as Treasurer  
 of Hughes County,  
     Defendants.

\*\*\*\*\*

STATE OF SOUTH DAKOTA      IN CIRCUIT COURT  
    SIXTH  
    JUDICIAL CIRCUIT

COUNTY OF HUGHES  
 WESTERN AIRLINES, INC.,  
 a corporation,  
     Plaintiff,

vs.

CIV. 83-222

HUGHES COUNTY, SOUTH DAKOTA  
 and its BOARD OF COMMISSIONERS,  
 D. J. HULL, et al.  
     Defendants.

\*\*\*\*\*

STATE OF SOUTH DAKOTA      IN CIRCUIT COURT  
    SEVENTH  
    JUDICIAL CIRCUIT

COUNTY OF PENNINGTON  
 WESTERN AIR LINES, INC.,  
 a corporation,  
     Plaintiff,

vs.

CIV. 83-311

PENNINGTON COUNTY, SOUTH DAKOTA  
 and its BOARD OF COMMISSIONERS,  
 LEO HAMM, et al.,  
     Defendants.



.....

STATE OF SOUTH DAKOTA	IN CIRCUIT COURT
	SECOND
COUNTY OF MINNEHAHA	JUDICIAL CIRCUIT

WESTERN AIR LINES, INC.,  
a corporation,  
Plaintiff,

vs.

CIV. 83-291

MINNEHAHA COUNTY, SOUTH DAKOTA  
and its BOARD OF COMMISSIONERS,  
M. E. SCHIRMER, et al.,  
Defendants.

.....

STATE OF SOUTH DAKOTA	IN CIRCUIT COURT
	SEVENTH
COUNTY OF PENNINGTON	JUDICIAL CIRCUIT

FRONTIER AIRLINES, INC.,  
a corporation,  
Plaintiff,

vs.

CIV. 83-310

PENNINGTON COUNTY, SOUTH DAKOTA  
and its BOARD OF COMMISSIONERS,  
LEO HAMM, et al.,  
Defendants.

.....

STATE OF SOUTH DAKOTA	IN CIRCUIT COURT
	SEVENTH
COUNTY OF PENNINGTON	JUDICIAL CIRCUIT

FRONTIER AIRLINES, INC.,  
a corporation,  
Plaintiff,

vs.

CIV. 83-308

PENNINGTON COUNTY, SOUTH DAKOTA  
and WINONA BRADY, as Treasurer  
of Pennington County,  
Defendants.

.....

STATE OF SOUTH DAKOTA	IN CIRCUIT COURT
	SECOND
COUNTY OF MINNEHAHA	JUDICIAL CIRCUIT

FRONTIER AIRLINES, INC.,  
a corporation,  
Plaintiff,

vs.

CIV. 83-292

MINNEHAHA COUNTY, SOUTH DAKOTA  
and its BOARD OF COMMISSIONERS,  
M.E. SCHIRMER, et al.,  
Defendants.

.....

STATE OF SOUTH DAKOTA	IN CIRCUIT COURT
	SECOND
COUNTY OF MINNEHAHA	JUDICIAL CIRCUIT

FRONTIER AIRLINES, INC.,  
a corporation,  
Plaintiff,

vs.

CIV. 83-287

MINNEHAHA COUNTY, SOUTH DAKOTA  
and DeLORIS ERICKSON, as Treasurer  
of Minnehaha County,  
Defendants.

\*\*\*\*\*

STATE OF SOUTH DAKOTA	IN CIRCUIT COURT
COUNTY OF MINNEHAHA	SECOND
OZARK AIR LINES, INC.,	JUDICIAL CIRCUIT
a corporation,	
Plaintiff,	

vs.

CIV. 83-290

MINNEHAHA COUNTY, SOUTH DAKOTA	
and its BOARD OF COMMISSIONERS,	
M. E. SCHIRMER, et al.	
Defendants.	

\*\*\*\*\*

STATE OF SOUTH DAKOTA	IN CIRCUIT COURT
COUNTY OF MINNEHAHA	SECOND
OZARK AIR LINES, INC.,	JUDICIAL CIRCUIT
a corporation,	
Plaintiff,	

vs.

CIV. 83-288

MINNEHAHA COUNTY, SOUTH DAKOTA	
and DeLORIS ERICKSON, as County	
Treasurer,	
Defendants.	

\*\*\*\*\*

STATE OF SOUTH DAKOTA	IN CIRCUIT COURT
COUNTY OF DAVISON	FOURTH
REPUBLIC AIRLINES, INC.,	JUDICIAL CIRCUIT
a corporation,	
Plaintiff,	

vs.

CIV. 83-284

DAVISON COUNTY, SOUTH DAKOTA  
and its BOARD OF COMMISSIONERS,  
FORREST GAETZE, et al.,  
Defendants.

\*\*\*\*\*

STATE OF SOUTH DAKOTA	IN CIRCUIT COURT
COUNTY OF DAVISON	FOURTH
REPUBLIC AIRLINES, INC.	JUDICIAL CIRCUIT
a corporation,	
Plaintiff,	

vs.

CIV. 83-283

DAVISON COUNTY, SOUTH DAKOTA  
and ERWIN VOLK, as County  
Treasurer,  
Defendants.

\*\*\*\*\*

STATE OF SOUTH DAKOTA	IN CIRCUIT COURT
COUNTY OF HUGHES	SIXTH
REPUBLIC AIRLINES, INC.	JUDICIAL CIRCUIT
a corporation,	
Plaintiff,	

vs.

CIV. 83-153

HUGHES COUNTY, SOUTH DAKOTA  
and RICHARD BUD RAY, as County  
Treasurer,  
Defendants.

\*\*\*\*\*

STATE OF SOUTH DAKOTA	IN CIRCUIT COURT
COUNTY OF HUGHES	SIXTH
	JUDICIAL CIRCUIT

*REPUBLIC AIRLINES, INC.,*  
a corporation,  
Plaintiff,

vs.

*HUGHES COUNTY, SOUTH DAKOTA*  
and its, *BOARD OF COMMISSIONERS,*  
*D. J. HULL, et al.,*  
Defendants.

CIV. 83-221

STATE OF SOUTH DAKOTA IN CIRCUIT COURT  
COUNTY OF CODINGTON THIRD  
*REPUBLIC AIRLINES, INC.,* JUDICIAL CIRCUIT  
a corporation,  
Plaintiff,

vs.

*CODINGTON COUNTY, SOUTH DAKOTA*  
and its *BOARD OF COMMISSIONERS,*  
*EDWARD SPEVAK, et al.,*  
Defendants.

CIV. 83-295

STATE OF SOUTH DAKOTA IN CIRCUIT COURT  
COUNTY OF PENNINGTON SEVENTH  
*REPUBLIC AIRLINES, INC.,* JUDICIAL CIRCUIT  
a corporation,  
Plaintiff,

vs.

*PENNINGTON COUNTY, SOUTH DAKOTA*

CIV. 83-309

and its *BOARD OF COMMISSIONERS,*  
*LEO HAMM, et al.,*  
Defendants.

STATE OF SOUTH DAKOTA IN CIRCUIT COURT  
COUNTY OF MINNEHAHA SECOND  
*REPUBLIC AIRLINES, INC.,* JUDICIAL CIRCUIT  
a corporation,  
Plaintiff,

vs.

CIV. 83-289

*MINNEHAHA COUNTY, SOUTH DAKOTA*  
and its *BOARD OF COMMISSIONERS,*  
*M. E. SCHIRMER, et al.,*  
Defendants.

STATE OF SOUTH DAKOTA IN CIRCUIT COURT  
COUNTY OF BROWN FIFTH  
*REPUBLIC AIRLINES, INC.,* JUDICIAL CIRCUIT  
a corporation,  
Plaintiff,

vs.

CIV. 83-278

*BROWN COUNTY, SOUTH DAKOTA*  
and its *BOARD OF COMMISSIONERS,*  
*MERRILL RIX, et al.,*  
Defendants.

STATE OF SOUTH DAKOTA IN CIRCUIT COURT  
COUNTY OF YANKTON FIRST  
*REPUBLIC AIRLINES, INC.,* JUDICIAL CIRCUIT



a corporation,  
Plaintiff,

vs.

CIV. 83-330

YANKTON COUNTY, SOUTH DAKOTA  
and its BOARD OF COMMISSIONERS,  
DEANE WILLIAMS, et al.,  
Defendants.

\*\*\*\*\*

STATE OF SOUTH DAKOTA      IN CIRCUIT COURT  
   THIRD  
COUNTY OF BEADLE      JUDICIAL CIRCUIT  
REPUBLIC AIRLINES, INC.,

a corporation,  
Plaintiff,

vs.

CIV. 83-275

BEADLE COUNTY, SOUTH DAKOTA  
and its BOARD OF COMMISSIONERS,  
CHARLES FLOWERS, et al.,  
Defendants.

\*\*\*\*\*

STATE OF SOUTH DAKOTA      IN CIRCUIT COURT  
   THIRD  
COUNTY OF BROOKINGS      JUDICIAL CIRCUIT  
REPUBLIC AIRLINES, INC.,

a corporation,  
Plaintiff,

vs.

CIV. 83-281

BROOKINGS COUNTY, SOUTH DAKOTA  
and its BOARD OF COMMISSIONERS,  
GEORGE MESSNER, et al.,  
Defendants.

\*\*\*\*\*

STATE OF SOUTH DAKOTA      IN CIRCUIT COURT  
   SECOND  
COUNTY OF MINNEHAHA      JUDICIAL CIRCUIT  
REPUBLIC AIRLINES, INC.,

a corporation,  
Plaintiff,

vs.

CIV. 83-285

MINNEHAHA COUNTY, SOUTH DAKOTA  
and DeLORIS ERICKSON, as  
County Treasurer,  
Defendants.

\*\*\*\*\*

STATE OF SOUTH DAKOTA      IN CIRCUIT COURT  
   FIFTH  
COUNTY OF BROWN      JUDICIAL CIRCUIT  
REPUBLIC AIRLINES, INC.,

a corporation,  
Plaintiff,

vs.

CIV. 83-277

BROWN COUNTY, SOUTH DAKOTA  
and ADELINE WIEDERICH, as  
County Treasurer,  
Defendants.

\*\*\*\*\*

STATE OF SOUTH DAKOTA      IN CIRCUIT COURT  
   FIRST  
COUNTY OF YANKTON      JUDICIAL CIRCUIT  
REPUBLIC AIRLINES, INC.,

a corporation,  
Plaintiff,

vs.

CIV. 83-329

YANKTON COUNTY, SOUTH DAKOTA  
and IRENE KILLIAN, as County  
Treasurer,  
Defendants.

\*\*\*\*\*

STATE OF SOUTH DAKOTA	IN CIRCUIT COURT
	THIRD
COUNTY OF BEADLE	JUDICIAL CIRCUIT
REPUBLIC AIRLINES, INC.,	
a corporation,	
Plaintiff,	

vs.

CIV. 83-276

BEADLE COUNTY, SOUTH DAKOTA  
and EVIE MAASS HOFER, as  
County Treasurer,  
Defendants,

\*\*\*\*\*

STATE OF SOUTH DAKOTA	IN CIRCUIT COURT
	THIRD
COUNTY OF BROOKINGS	JUDICIAL CIRCUIT
REPUBLIC AIRLINES, INC.,	
a corporation,	
Plaintiff,	

vs.

CIV. 83-282

BROOKINGS COUNTY, SOUTH DAKOTA  
and KENNETH HARVEY, as County  
Treasurer,  
Defendants.

\*\*\*\*\*

STATE OF SOUTH DAKOTA	IN CIRCUIT COURT
	SEVENTH
COUNTY OF PENNINGTON	JUDICIAL CIRCUIT

REPUBLIC AIRLINES, INC.,  
a corporation,  
Plaintiff,

vs.

CIV. 83-306

PENNINGTON COUNTY, SOUTH DAKOTA  
AND WINONA BRADY, as County  
Treasurer,  
Defendant.

\*\*\*\*\*

STATE OF SOUTH DAKOTA	IN CIRCUIT COURT
	THIRD
COUNTY OF CODINGTON	JUDICIAL CIRCUIT
REPUBLIC AIRLINES, INC.,	
a corporation,	
Plaintiff,	

vs.

CIV. 83-296

DONDINGTON COUNTY, SOUTH  
DAKOTA and MARGARET MCNULTY,  
as County Treasurer,  
Defendants.

STATE OF SOUTH DAKOTA	IN CIRCUIT COURT
	SECOND
COUNTY OF MINNEHAHA	JUDICIAL CIRCUIT
IN THE MATTER OF THE APPEAL	CIV. 83-319
OF REPUBLIC AIRLINES, INC.,	
FROM THE DECISION OF THE	
STATE BOARD OF EQUALIZATION.	

\*\*\*\*\*

STATE OF SOUTH DAKOTA	IN CIRCUIT COURT
	SEVENTH
COUNTY OF PENNINGTON	JUDICIAL CIRCUIT
IN THE MATTER OF THE APPEAL	
OF REPUBLIC AIRLINES, INC.,	CIV. 83-340

FROM THE DECISION OF THE STATE  
BOARD OF EQUALIZATION.

\*\*\*\*\*

STATE OF SOUTH DAKOTA           IN CIRCUIT COURT  
  SEVENTH  
COUNTY OF PENNINGTON       JUDICIAL CIRCUIT  
*IN THE MATTER OF THE APPEAL*  
*OF CONTINENTAL AIRLINES CORPORATION*  
FROM THE DECISION OF THE  
STATE BOARD                               CIV. 83-342  
OF EQUALIZATION.

\*\*\*\*\*

STATE OF SOUTH DAKOTA       IN CIRCUIT COURT  
  FIFTH  
COUNTY OF BROWN           JUDICIAL CIRCUIT  
*IN THE MATTER OF THE APPEAL*  
*OF REPUBLIC AIRLINES, INC.,*  
FROM THE DECISION OF THE STATE   CIV. 83-326  
BOARD OF EQUALIZATION.

\*\*\*\*\*

STATE OF SOUTH DAKOTA       IN CIRCUIT COURT  
  THIRD  
COUNTY OF CODINGTON       JUDICIAL CIRCUIT  
*IN THE MATTER OF THE APPEAL*  
*OF REPUBLIC AIRLINES, INC.*       CIV. 83-316  
FROM THE DECISION OF THE STATE  
BOARD OF EQUALIZATION.

\*\*\*\*\*

STATE OF SOUTH DAKOTA       IN CIRCUIT COURT  
  FIRST  
COUNTY OF YANKTON       JUDICIAL CIRCUIT  
*IN THE MATTER OF THE APPEAL*  
*OF REPUBLIC AIRLINES, INC.,*       CIV. 83-331

FROM THE DECISION OF THE STATE  
BOARD OF EQUALIZATION.

\*\*\*\*\*

STATE OF SOUTH DAKOTA       IN CIRCUIT COURT  
  SIXTH  
COUNTY OF HUGHES           JUDICIAL CIRCUIT  
*IN THE MATTER OF THE APPEAL*  
*OF WESTERN AIR LINES, INC.*  
FROM THE DECISION OF THE STATE   CIV. 83-244  
BOARD OF EQUALIZATION.

\*\*\*\*\*

STATE OF SOUTH DAKOTA       IN CIRCUIT COURT  
  SEVENTH  
COUNTY OF PENNINGTON       JUDICIAL CIRCUIT  
*IN THE MATTER OF THE APPEAL*  
*OF WESTERN AIR LINES, INC.*       CIV. 83-343  
FROM THE DECISION OF THE STATE  
BOARD OF EQUALIZATION.

\*\*\*\*\*

STATE OF SOUTH DAKOTA       IN CIRCUIT COURT  
  SECOND  
COUNTY OF MINNEHAHA       JUDICIAL CIRCUIT  
*IN THE MATTER OF THE APPEAL*  
*OF WESTERN AIR LINES, INC.*  
FROM THE DECISION OF THE STATE   CIV. 83-320  
BOARD OF EQUALIZATION.

\*\*\*\*\*

STATE OF SOUTH DAKOTA       IN CIRCUIT COURT  
  SECOND  
COUNTY OF MINNEHAHA       JUDICIAL CIRCUIT  
*IN THE MATTER OF THE APPEAL*  
*OF OZARK AIR LINES, INC.,*  
FROM THE DECISION OF THE STATE   CIV. 83-318



BOARD OF EQUALIZATION.

\*\*\*\*\*

STATE OF SOUTH DAKOTA      IN CIRCUIT COURT  
    SECOND  
 COUNTY OF MINNEHAHA      JUDICIAL CIRCUIT  
 IN THE MATTER OF THE APPEAL  
 OF FRONTIER AIRLINES, INC.  
 FROM THE DECISION OF THE STATE      CIV. 83-317  
 BOARD OF EQUALIZATION.

\*\*\*\*\*

STATE OF SOUTH DAKOTA      IN CIRCUIT COURT  
    SEVENTH  
 COUNTY OF PENNINGTON      JUDICIAL CIRCUIT  
 IN THE MATTER OF THE APPEAL  
 OF FRONTIER AIRLINES, INC.  
 FROM THE DECISION OF THE STATE      CIV. 83-341  
 BOARD OF EQUALIZATION.

\*\*\*\*\*

IN CIRCUIT COURT  
 SIXTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA  
 COUNTY OF HUGHES

WESTERN AIR LINES, INCORPORATED, a corporation, *et al.*,  
*Plaintiffs,*

vs.

HUGHES COUNTY, SOUTH DAKOTA and its BOARD OF  
 COMMISSIONERS, *et al.*,  
*Defendants.*

NOTICE OF APPEAL

TO: John Dewell, Assistant Attorney General, Attorney  
 for all of the consolidated Defendants and to George H.  
 Danforth, Beadle County State's Attorney, Clyde R. Cal-  
 hoon, Brookings County State's Attorney, Marilyn J. Mar-  
 shall, Brown County State's Attorney, Roger W. Ellyson,  
 Codington County State's Attorney, Patrick W. Kiner,  
 Davison County State's Attorney, Steven L. Zinter, Hughes  
 County State's Attorney, Joaquin K. Hanson, Minnehaha  
 County State's Attorney, Rodney C. Lefholz, Bennington  
 County State's Attorney and Larry F. Hosmer, Yangton  
 County State's Attorney, attorneys for the respective  
 named counties and their officers and commissioners:

PLEASE TAKE NOTICE that the Plaintiffs, Western Air  
 Lines, Republic Airlines, Frontier Airlines, Ozark Air Lines  
 and Continental Airlines, appeal to the Supreme Court of  
 the State of South Dakota, from the final Judgment ren-  
 dered in this action on February 23, 1984 with Notice  
 thereof having been given on March 9, 1984, the cases  
 having been consolidated by the Circuit Court pursuant to  
 Stipulations of the various parties and Orders entered prior  
 hereto by the Court so that all of the actions shown on

the attached Exhibit "A", which is incorporated herein by reference, are consolidated into this one proceeding and this one appeal; and said appeals are united in this Notice and in the undertaking and in all of the future proceedings into a single appeal.

DATED this 9th day of April, 1984.

RITER, MAYER, HOFER & RITER

By: /s/Robert C. Riter, Jr.

Members of said firm

310 S. Coteau - P.O. Box 280

Pierre, SD 57501-0280

Attorneys for Plaintiffs

**Opinion, Supreme Court of South Dakota**

**SEE JURISDICTIONAL STATEMENT, APP. A**

---

**Judgment on Appeal**

**SEE JURISDICTIONAL STATEMENT, APP. C**

---

**Notice of Appeal to the Supreme Court of the United States**

**SEE JURISDICTIONAL STATEMENT, APP.D**